

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

77-679

OCTOBER TERM, 1977

No. 75-C-178

ROBERTO DOMINGO VALE,

Petitioner,

VERSUS

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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The Petitioner, ROBERTO DOMINGO VALE, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on August 24, 1977.

OPINION

The Opinion of the United States Court of Appeals for the Fifth Circuit on original submission of the cause and on Motion for Rehearing were per curiam, affirming the decision of the trial court.

JURISDICTION

The judgment of the United States Court of Appeals was entered and delivered on August 24, 1977, a timely petition for Rehearing was denied by order of the United States Court of Appeals on October 13, 1977. This petition is filed within thirty (30) days of the date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

I.

That the Motion to Suppress the evidence which supported Appellant's Conviction, should not have been denied absent probable cause for the search of Appellant's vehicle.

II.

That the trial court committed reversible error in continually exhibiting hostility towards Appellant and the proper presentation of his defense.

STATEMENT OF THE CASE

Petitioner, ROBERTO DOMINGO VALE, was charged by grand jury indictment with possessing a quantity of marijuana with intent to distribute in violation of 21 U.S.C. 841(a)(1).

Trial of Defendant was to a jury on the one-count indictment. A hearing on Defendant's Motion to Suppress the Evidence was held in advance of trial and overruled. The Defendant had been

stopped and his vehicle searched at a traffic checkpoint on U.S. Highway 281, South of Falfurrias, Texas. The immigration officers in charge gathered suspicion because of a missing front license plate and because of a unique odor of some type of spray coming from the automobile. The contraband, or controlled substance, was found in the trunk of the automobile driven by Defendant. It was Appellant's defense that he did not know the substance was in the automobile. He had only picked up the automobile from the used car lot of the partnership the night before, and was driving to San Antonio or Dallas to participate in a car auction.

At the conclusion of the trial, the jury found the Defendant guilty as charged and the trial court assessed a sentence of thirty (30) months to serve with a special term of parole.

The Court of Appeals rendered a summary opinion for affirmance on August 24, 1977 and further denied Motion for Rehearing en banc on October 13, 1977. Petitioner remains on bond at the filing of this Petition, and respectfully requests stay of mandate until this Petition is reviewed by the Court.

REASONS FOR GRANTING THE WRIT

A Writ of Certiorari should be granted in this case because the facts and circumstances surrounding the stop at the checkpoint did not give rise to that reasonable suspicion for a further and thorough search of petitioner's vehicle. (S.F. 12-16). A Writ of Certiorari should be granted in this case because the facts and circumstances surrounding the stop at the checkpoint did not give rise to that reasonable suspicion and probable cause for a further and thorough search of petitioner's vehicle. In *Almeida-Sanchez vs. United States*, 413 U.S. 266 (1973), this court held that in the absence of probable cause or consent, the warrantless search of Defendant's automobile violated his Fourth

Amendment Rights. In *United States vs. Ortiz*, 95 S.Ct. 2585 (1975), this court also held that traffic checkpoints removed from the border and its functional equivalents absent probable cause may not search private vehicles and that such checkpoint search at traffic checkpoints removed from the border and its functional equivalents violates the Fourth Amendment as much as a similar roving patrol search, the Court repeated "that a search, even of an automobile, is a substantial invasion of privacy."

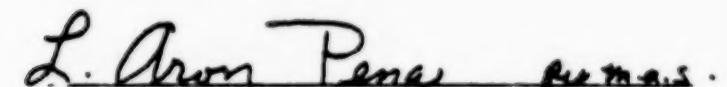
On the second question presented the trial court committed reversible error in continually exhibiting hostility towards petitioner's main defense of not having knowledge as to the location of the marijuana in the trunk of his car. The trial judge's behavior was prejudicial to the proper and fair presentation of appellant's case to the jury. (S.F. 24-26, 33-34, 51, 74, 76-77, 82-83, 92-93). In *Estelle vs. Williams*, 96 S.Ct. 1691 this court held that presumption of innocence is a basic component of a fair trial under our system of criminal justice. Under the Sixth Amendment of the United States Constitution a defendant is guaranteed the right to assistance of counsel and under the Fourteenth Amendment Due Process Clause, a person is protected of life, liberty and property.

A denial of fair and impartial trial as guaranteed by the Sixth Amendment is also denial of due process demanded by the Fifth and Fourteenth Amendments.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit. Petitioner further prays that an order issue staying mandate.

Respectfully submitted,



L. Aron Pena
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 1977,
two copies of the Petition for Writ of Certiorari were mailed,
postage prepaid to the Honorable Robert H. Bork, Solicitor
General of the U.S., Department of Justice, Washington, D.C.
20530.

L. Aron Pena gumas.
L. Aron Pena

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 77-5046
Summary Calendar

D. C. Docket No. CR 75-C-178

UNITED STATES OF AMERICA.

Plaintiff-Appellee.

versus

ROBERT DOMINGO VALE.

Defendant-Appellant.

*Appeal from the United States District Court for the
Southern District of Texas*

Before BROWN, Chief Judge, and RONEY and HILL.
Circuit Judges.

JUDGMENT

FILED: October 25, 1977

This cause came on to be heard on the transcript of the
record from the United States District Court for the Southern

District of Texas, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

August 24, 1977

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

October 13, 1977

EDWARD W. WADSWORTH
CLERK

TEL 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA. 70130

TO ALL PARTIES LISTED BELOW:

NO. 77-5046 - U.S.A. v. ROBERT DOMINGO VALE

Issued as Mandate: October 21, 1977

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By /s/ Susan N. Gravois
Deputy
New Orleans, Louisiana

October 21, 1977

Dear Counsel:

This is to advise that an order has this day been entered denying the petition () for rehearing,* and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition () for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By _____
Deputy Clerk

*on behalf of appellant, Robert Domingo Vale

cc: Mr. L. Aron Pena
Ms. Mary L. Sinderson

[12]

[12] A No, sir, I did not.

Q All right, sir. When you say you take them into custody, you bring them into your van or your mobile home there, is that correct?

A Yes, sir.

Q At the time Mr. Vale's car approached the checkpoint - this was about 9:30 in the morning?

A Yes, sir.

Q And this was a Sunday morning, do you recall that?

A No, I don't recall the day of the week.

Q But it was about mid-morning on a particular day?

A Yes, sir, about 9:30.

Q And if I told you that April the 20th of 1975 on my calendar for last year shows to be a Sunday, you wouldn't disagree with me; you wouldn't know, but you wouldn't disagree with me?

A No, sir.

Q Okay. Now, Mr. Standridge, did Mr. Vale do anything suspicious when he arrived at the checkpoint?

A Well, he did have - he didn't have a front license plate, which indicated that he possibly [13] wasn't from Texas, or from our county.

Q Did you realize later why he did not have a front license plate?

[13]

[13]

A Yes, sir.

Q Because this was a dealer car, an automobile dealer's car?

A Yes, sir.

Q A used car. He did have a back license tag, a dealer's tag?

A A dealer's tag, yes.

Q So, being an officer of the Federal Government, it aroused your suspicion that the front of the vehicle did not have a license tag?

A Yes, sir.

Q But that suspicion was cleared up in your mind?

A Yes, sir.

Q But was there any hesitation on his part to stop at the checkpoint?

A No, sir.

Q Did he come to a sudden stop or a braking stop or -

A I really don't recall.

Q Okay. Now, getting back to the order of marijuana, you say that in addition to this order which you are familiar with because of [14] your experience in your work, there was another odor which you thought was some sort of an air freshener or deodorant?

A Yes, sir.

[14]

Q Is it possible this was shaving lotion of some kind?

A Well, yes, sir, but it gave more of a strong odor like a house spray type.

Q Did you search the car any time after he showed you the trunk of the car, did you search the interior of the car?

A Well, we searched for weapons.

Q Did you find any weapons?

A No, sir.

Q Did you find any type deoderant or air freshener, an Airwick or anything?

A No, sir.

Q You found nothing in the car that would have confirmed your suspicion this was an air freshener?

A No, sir.

Q Now, you know now that Mr. Vale is from Edinburg?

A Yes.

Q And Edinburg is about in the middle of the Valley, [15] the Rio Grande Valley, and is that about what, fifty miles south of this checkpoint on 281?

A That's about right.

Q So if someone used air freshener in the car, it must have been done about an hour before?

MR. BERG: Your Honor, that would call for the rankest kind of conclusion. It could have been done two minutes before and thrown out the window. I object to that.

THE COURT: It is cross-examination. Go ahead.

MR. PENA: Thank you, Your Honor. Now, Your Honor, we ask that the record be stricken as to the statement of Mr. Berg and that the jury be advised that that was his testimony and not -

THE COURT: Well, Ladies and Gentlemen, any time an attorney objects or makes any statement, of course, none of that is evidence and you will disregard it.

MR. PENA: Thank you, Your Honor.

Q (By Mr. Pena) Mr. Standridge, Mr. Vale, is it because of his appearance, that he appears to be of Mexican ancestry, that you inquired of his citizenship?

[16] A No, sir, not that in particular.

Q Do you do that with everyone coming through the checkpoint?

A No, sir, not everyone.

Q Was there anything about his person that made you go through your duties of inquiring of his citizenship?

A No, sir.

Q It was mid-morning, daytime; was the weather all right, any rain, any cold weather or -

A Well, it wouldn't have been any rain, but I don't recall.

Q This was April. It must have been a nice spring day. You don't recall anything in particular about the day?

A No, sir.

Q Now, when you asked him to open the trunk, did he proceed to open the trunk for you?

A Well, I didn't put it on the I-44. I don't recall if he opened it or if I opened it.

Q Your I-44 is the day report for the offense?

A Yes, sir.

Q All right. In reviewing your I-44, Officer Standridge, one that was approved by Agent Scott, you said that the subject was asked to open the

* * *

[24] A Yes, sir.

Q Have you seen Mr. Garza lately?

A No, I haven't seen him since – it has been May or June. I haven't seen him, sir.

Q Did you dissolve your business and partnership, sir?

A Well, after this incident happened, I went back, and a little investigation as to why this could have been in this car, and I found out the type of man he was, a little bit about him –

MR. BERG: Your Honor, I'm going to object to that and ask the Court to instruct the jury to disregard all of the self-serving voluntary statements.

THE COURT: There are a lot of extraneous matters that are not pertinent to this lawsuit about which the witness has just testified and you will disregard his testimony that he volunteered.

MR. PENA: Your Honor, please, I will again ask my client to only answer the questions, but a lot of this will be pertinent, Your Honor, but I believe he is getting ahead of himself and I will ask Mr. Vale –

[25] THE COURT: Well, his long background and his history is not pertinent.

Q (By Mr. Pena) Mr. Vale, you said you went out of business with your partner.

A Yes, sir.

Q All right. Let's get back to the critical thing of why you dissolved. The car you were driving on that day that you were stopped by Mr. Standridge, was that your car, sir?

A No, sir.

Q Okay, tell the jury whose car it was.

A It was a company car we had at the lot that we bought from Mr. Bob Whistler, and the car, we bought it about two days, it might have been two or three days, I don't recall exactly how long ago we bought those cars, but we bought them in a batch of about four or five cars.

Q Let me ask you the questions again, otherwise Mr. Berg is going to stop you. When did you pick up that car to drive towards San Antonio, that morning or the night before?

A That night. I picked it up at night and then I took off the next morning. At night, I picked up the car -

Q Just a moment.

[26] MR. BERG: Your Honor, Counsel is assuming facts that are not in evidence in many of his questions and I would ask the Court to instruct him not to do that. There is no evidence that he was going to drive the car to San Antonio, Counsel volunteered that.

MR. PENA: I will ask that.

Q (By Mr. Pena) Mr. Vale, where were you driving that day when you were stopped at the checkpoint?

A I was going to San Antonio.

Q All right.

A Or to Dallas. It was two car auctions going on. One was San Antonio, that I had received the literature to, and another one in Dallas.

THE COURT: Mr. Pena, he is your witness, now, and will you tell him again -

MR. PENA: Yes, Your Honor. May I talk to him briefly, Your Honor please?

THE COURT: All right.

(Conference between Mr. Pena and the witness, out of hearing of the reporter.)

* * *

[33] **CROSS EXAMINATION**

BY MR. BERG:

Q Mr. Vale -

A Yes, sir.

Q - you say you bought this car from Bob Whistler?

A Of Pharr, yes, sir.

Q And you say that the car that you were in there at the checkpoint on April 20th, that you had been down to your car lot the night before to pick that car up and took it to your home overnight, right?

A That night before or the same night that I pick it up.

Q Well, if you were arrested on Sunday, you were down at the car lot Saturday night picking the car up, isn't that what you told the jury?

A I been there all day and left for lunch and then -

THE COURT: Just answer the question.

Q (By Mr. Berg) All right. In fact, didn't you buy that car that very Sunday -

A No, sir.

Q - April the 20th?

A No, sir.

[34] Q Well, why would the title show a transfer date of April 20, 1975?

A Because we get the cars and then later they send you the title, sir. When you buy the cars, you don't get the titles transferred right there and then, it takes sometimes a week or two or three.

THE COURT: You have to sign something, though, when you buy a car, don't you?

A Yes, sir.

THE COURT: And that's dated, isn't it?

A No, sir, not -

THE COURT: Don't tell me it is not dated when -

A Well, that particular day, you sign -

MR. PENA: May I talk to my client for a moment, Your Honor?

THE COURT: All right.

(Conference between Mr. Pena and the witness, out of hearing of the reporter.)

Q (By Mr. Berg) Didn't you actually sign the papers on the 20th with Mr. Bob Whistler?

A No, sir, on that Sunday, no, sir.

* * *

[51] Mr. Berg can't understand, what made you drive the car from Edinburg all the way, thinking of going to San Antonio, maybe to Dallas, with motor trouble, engine trouble?

A It's not an engine trouble, sir, it's the thermostat, you can take the top hose off and just take the thermostat off and leave it without the thermostat and drive it out there. The weather was not cold or anything. You don't need a heater then.

Q Did you use any type of a cream or deoderant or any kind of -

A My shaving lotion that I usually do, I put it on three or four times every time.

Q In the mornings?

A Yes, sir.

Q This morning, did you put any shaving lotion on?

A Yes, sir.

MR. BERG: That's not relevant, Your Honor. I'm going to object to that.

THE COURT: I'll sustain the objection.

MR. PENA: That's all, Your Honor.

* * *

[74] Q Six and a half years?

A Yes, sir.

Q Is it fair to say that you have made over a hundred cases in the last six years?

A Easily.

THE COURT: Well, that's not relevant.

MR. PENA: Your Honor -

THE COURT: I'm not going to let you run back for six years and ask him about every case and that sort of thing.

MR. PENA: No, sir, Your Honor knows me. I will try this case as fast as I can, with due regard to -

THE COURT: You are entitled to protect your client, I recognize that, but this doesn't have any relevance either to his testimony or his recollection, it is just too broad.

MR. PENA: Your Honor, I was going to ask him about -

Q (By Mr. Pena) Well, this case was made in April of 1975, is that correct, Mr. Scott?

A That's correct.

Q Is it possible that Mr. Vale did suggest to you that you follow him to San Antonio and find out

* * *

[76] A He disclaimed knowledge of the marijuana, stated that he was driving the car to Dallas to sell it and that he was selling it for R & R Motors and that he was a partner in R & R Motors.

Q Did you follow your investigation with R & R Motors?

A Yes, sir, a request for investigation was made in order to investigate where the vehicle came from and the partners in R & R.

Q Did you check Mr. Reynaldo Garza, the other partner in the matter?

A I did not, no, sir.

Q Did anyone else?

A Yes, sir.

Q Did anyone else find out anything about Mr. Garza, his background, any involvement with narcotics?

A Yes, sir.

Q And what was that investigation?

MR. BERG: Your Honor, I don't see -

THE COURT: You are going to open the door to a lot of things if you go into this, asking for hearsay testimony.

MR. BERG: Your Honor, the way I see it, he has already asked for a lot of hearsay testimony on redirect examination.

[77] MR. PENA: I asked him, Your Honor, if he went into - may we approach the bench, Your Honor?

THE COURT: No, I know what you are going to do, but I am just telling you if you start asking this witness for hearsay testimony, you are going to start opening doors.

Q (By Mr. Pena) Did you make any investigation to find out about any involvement of any vehicle of his in narcotics?

A No, sir.

Q Can you tell me the names of any agents that may have so we can call them in if they are available?

MR. BERG: Your Honor, that itself would be hearsay, what some agent told him that he might know about somebody else.

THE COURT: Yes, we are not going to get into that. You have gone as far as you need to go.

Q (By Mr. Pena) Mr. Scott, when did you all arrive at the checkpoint to follow up this matter?

A 11:55 a.m.

Q So it wasn't but a couple of hours after he was detained at the checkpoint?

* * *

[82] hour delay?

A Yes, sir.

Q And assume for the moment in that hypothetical situation that there was a car following this car because of the value of the contraband, would that car realize what was being done, the driver of that car?

A Hopefully not. Again, this goes back to a procedural matter. Once we have diverted the marijuana, we would have to come up with a story which would explain the time lapse. Again, this goes back to what the Defendant is going to tell us as far as his arrangement, how much time we have got, who he has got to meet, how many vehicles are covering it, how honest he is.

Q But, Mr. Scott, that is assuming he knows the marijuana is there.

A Well, if he doesn't know, how could he assist?

Q As he indicated, let him drive on to San Antonio, park the car, with you maintaining a surveillance on the car, a tail on the car.

MR. BERG: Is this a hypothetical or is he getting back -

THE COURT: No, this is just an argument, Mr. Pena. I think you have [83] argued with the witness enough.

MR. PENA: That's all, Your Honor.

MR. BERG: We have no further questions of this witness, Your Honor, and I would like to call Mr. Walton. Your Honor.

THE COURT: All right, you may step down.

MR. PENA: We are going to object to Mr. Walton testiryng because -

MR. BERG: Your Honor, in that event, I would like to recall Mr. Standridge.

THE COURT: All right.

* * *

[92] ROBERT DOMINGO VALE, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MR. PENA:

Q Mr. Vale, you have been sworn and again let me remind you, so we can get on and finish today, just answer the question. If you feel like you have an explanation, make it short. Okay?

Is this the first time you have ever been in a trial?

A Yes, sir.

Q And have you ever been convicted of any felony of any kind?

A No, sir.

Q Mr. Vale, what is your annual income with your job?

MR. BERG: Your Honor, none of this is relevant or -

THE COURT: That hasn't been covered by anything else. It is not sur-rebuttal testimony and I am going to sustain the objection.

MR. PENA: Your Honor, there was some [93] question about the ability of Mr. Vale to maintain a family.

THE COURT: No, I'm going to sustain the objection to that line of questioning.

MR. BERG: All those questions, Your Honor, were asked of Mr. Vale when he was on the stand before.

MR. PENA: Well, Your Honor, may I ask leave of the Court to recall Mr. Vale for pertinent testimony?

THE COURT: No, he has been on the stand, and everything, to me, has been covered two or three times, and if there is something that hasn't already been covered that needs to be covered in answer to the rebuttal witnesses of the Government, you can do that, but your direct testimony is concluded, has been concluded.

MR. PENA: Your Honor, may we be allowed to make a bill on this after the trial?

THE COURT: Yes, sir.

MR. PENA: Thank you.

Q (By Mr. Pena) Mr. Vale, how did you come to Corpus Christi, sir, after you were stopped at the checkpoint?

* * *